IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Om Prakash Bhaiya v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.3569/1998
under Article 226 of the Constitution of India.

Date of Order : 16th May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

By this writ petition a challenge is given by the petitioner to initiation of disciplinary proceedings against him under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) and to the order dated 25.4.1998 passed by the disciplinary authority imposing a penalty of removal upon him and to the order dated 1.1.1999 passed by the appellate authority affirming the order dated 25.4.1998.

The facts in brief which are necessary for adjudication of present writ petition are that a memorandum dated 11.4.1997 under Rule 16 of the Rules of 1958 was served upon the petitioner along with a statement of allegation. The petitioner was charged for remaining unauthorised and wilful absent. The petitioner in response to the memorandum dated 11.4.1997 submitted an explanation dated NIL stating therein that he never intended to remain unauthorised or wilful absent from duty. The petitioner while denying the allegation levelled stated in explanation that by an order dated 31.5.1996 passed by the Director, Department of Information and Public Relation, one Shri Jagdish Purohit was transferred from Jodhpur to Churu as Lower Division Clerk on abolition on the post of Lower Division Clerk at Suchana Kendra, Jodhpur. The order passed by the Director was amended even without giving information to him by Dy. Director (Administration) and in place of aforesaid Shri Jagdish Purohit the petitioner was transferred from Jodhpur to Churu by order dated 13.6.1996. The petitioner in spite of it performed the order dated 13.6.1996 and joined as Lower Division Clerk at Churu. The petitioner further stated that he came to Jodhpur to serve his old ailing mother and for the purpose he sought leave from competent authority and submitted number of applications in this regard.

The disciplinary authority by an order dated 6.5.1997 appointed Shri Kushal Tharwani, Assistant Director of the Department as inquiry officer to inquire into the charges levelled against the petitioner. The petitioner after appointment of the inquiry officer submitted a detailed representation dated 11.10.1997 (Anx.7) to the Director, Information and Public Relation, Directorate, Jaipur pointing out the fact that Shri Ramswaroop Joshi (respondent No.3) without having any authority amended the order dated 31.5.1996 by order dated 13.6.1996 and transferred him in place of aforesaid Shri Jagdish Purohit. The petitioner in aforesaid representation in quite unambiguous terms stated that Shri Ramswaroop Joshi (respondent No.3) was not having any authority to amend the order dated 31.5.1996 passed by the Director and was also not an authority competent to transfer a Lower Division Clerk.

After receipt of representation dated 11.10.1997 the respondents by an order dated 20.10.1997 appointed aforesaid Shri Ramswaroop Joshi, the then Joint Director as inquiry officer to inquire into the allegations levelled against the petitioner by memorandum dated 11.4.1997 in place of Shri Kushal Tharwani who was appointed as inquiry officer by order dated 6.5.1997. The petitioner on appointment of Shri Ramswaroop Joshi (respondent No.3) as inquiry officer submitted an application to the disciplinary authority

to change the inquiry officer as the petitioner was having certain doubts about impartiality of aforesaid Shri Ramswaroop Joshi (respondent No.3). No action was taken by the respondents upon the application submitted by the petitioner for change of inquiry officer.

The petitioner was served with a notice to show cause dated 19.2.1998 (Anx.12) to submit an explanation/personal hearing with regard to proposed punishment that was of removal from services. The petitioner submitted a detailed explanation and objection with regard to proposed punishment. The petitioner in quite unambiguous terms stated that no disciplinary proceeding as required under the Rules was conducted. The petitioner also alleged bias against inquiry officer and also gave reference to the notice dated 1.11.1997 whereby he made a request for change of inquiry officer.

After affording an opportunity of personal hearing the disciplinary authority by order dated 25.4.1998 imposed a punishment of removal upon the petitioner. Being aggrieved by the same an appeal was preferred by the petitioner under Rule 23 of the Rules of 1958 and the same came to be rejected by the appellate authority by an order dated 1.1.1999. Hence, present writ petition is preferred by the petitioner.

This Court by order dated 6.5.2005 directed the respondents to produce entire record of the disciplinary proceeding in question before the court on 16.5.2005. Accordingly the respondents produced complete record before the Court today.

I have perused and scanned the entire record.

In fact the record produced by the respondents is compilation of certain documents. By no stretch of imagination it can be said to be a record of the disciplinary proceeding. I specifically asked learned Additional Government Advocate Shri Shyam Ladrecha about the record of disciplinary proceeding, however, in turn he stated that no record other than the record produced is available with the respondents and the record produced is the record of the disciplinary proceeding. After perusal and scanning the record the same was returned to the counsel for the respondents, however, a photocopy of the inquiry report has been taken on record of the case. From perusal and scanning of record I found that no order sheets of the disciplinary proceeding were drawn by the inquiring authority. In fact the inquiring authority called the petitioner on 10.12.1997 and on that day itself the inquiring authority completed the entire inquiry and thereafter he submitted the inquiry report to the disciplinary authority on 6.1.1998.

In view of factual foundation above I heard the counsel for the parties.

The first contention of the counsel for the petitioner is that no disciplinary proceeding as contemplated under the Rules of 1958 was conducted by the inquiry officer. It is alleged by the counsel for the petitioner that the inquiry officer conducted the inquiry proceeding in quite vague manner and which could not be treated as disciplinary proceeding as required under the Rules of 1958.

I have perused the inquiry report from the record of the respondents. The inquiry report submitted by the inquiry officer Shri Ramswaroop Joshi (respondent No.3) to the disciplinary authority reads as under:-

" प्रकाश भैया, कनिष्ठ लिपिक, सूचना एवं जनसम्पर्क कार्यालय
चूरू के विरूद्ध जांच रिपोर्ट

श्री ओम प्रकाश भैया, कनिष्ठ लिपिक, सूचना एवं जनसम्पर्क कार्यालय, चूरू के विरूद्ध राजस्थान सिविल सेवा { वर्गीकरण, नियंत्रण एवं अपील } नियम- 1958 के नियम- 16 के अन्तर्गत जांच के निर्देश दिए गए थे । श्री ओम प्रकाश भैया, कनिष्ठ लिपिक को अपने दस्तावेज एवं प्रमाण पत्र आदि लेकर दिनांक 10-12-97 को निदेशालय में बुलाया गया । श्री भैया 10-12-97 को उपस्थित हुए ।

श्री भैया ने निदेशालय द्वारा दिए गए ज्ञापन संख्या 6781-83 दिनांक 11-4-97 तथा उसके साथ प्रेषित आरोप विवरण पत्र प्राप्त होना स्वीकार किया ।

श्री भैया का सूचना एवं जनसम्पर्क कार्यालय, जोधपुर से पद समाप्त हो जाने के कारण 21-5-96 को चूरू स्थानान्तरण किया गया था एवं आदेशों की अनुपालना में श्री भैया ने 29-6-96 को चूरू में कार्यभार ग्रहण किया ।

श्री भैया 5-8-96 की रात्री को चूरू से बिना मुख्यालय छोड़ने की अनुमति प्राप्त किए जोधपुर चले गये एवं 6-8-96 से कार्यालय से लगातार अनुपस्थित चल रहे हैं तथा श्री भैया ने 6-8-96 से 20-8-96 एवं 27-9-96 से 31-12-96 तक की अवकाश वृद्धि का आवेदन सूचना एवं जनसम्पर्क कार्यालय, चूरू को भिजवाया है इसके पश्चात् 31-12-96 से आज तक के लिए श्री भैया ने किसी भी प्रकार का अवकाश आवेदन भी नहीं भिजवाया है ।

श्री भैया को विधानसभा उपचुनाव सरदारशहर के दौरान ड्यूटी पर शीघ्र उपस्थित होने के निर्देश दिए गए परन्तु इसके बावजूद भी श्री भैया कार्यालय में उपस्थित नहीं हुए और श्री भैया ने 15-9-96 को एक आवेदन पत्र यह जानते हुए भी भिजवाया कि अनिवार्य सेवा निवृत्ति 25 वर्ष की सेवा अवधि या 50 वर्ष की आयु होने पर सरकार द्वारा दी जाती है । अत: इसके तहत उनकी सेवा निवृत्ति नहीं हो सकती, फिर भी उन्होंने अनिवार्य सेवा निवृत्ति हेतु आवेदन किया ।

श्री भैया के उक्त आवेदन पर जब उनसे स्वैच्छिक सेवा निवृत्ति के लिए आवेदन करने को कहा गया तो उन्होंने पुन: अवकाश वृद्धि के लिए 27-9-96 से 31-12-96 तक के अवकाश वृद्धि का आवेदन प्रस्तुत कर दिया ।

उपरोक्त प्रकार से श्री भैया येन केन प्रकारेण दबाव बनाते हुए अपना स्थानान्तरण सूचना एवं जनसम्पर्क कार्यालय, चूरू से जोधपुर कराना चाहते हैं और इसी को आधार बनाकर वे जनसम्पर्क कार्यालय, चूरू से लगभग डेढ़ वर्ष से अनुपस्थित चल रहे है । इसके लिए उन्होंने 1 जनवरी, 97 से दिसम्बर, 97 तक के लिए किसी भी प्रकार का आवेदन भी प्रस्तुत नहीं किया है । इस प्रकार कार्यालय से स्वैच्छा से अनुपस्थित रहने के ये दोषी पाये जाते है । अत: इनके विरूद्ध नियमानुसार कार्यवाही किया जाना प्रस्तावित है ।"

एस. डी.

{ रामस्वरूप जोशी }
जांच अधिकारी एवं
संयुक्त निदेशक { समाचार }
सूचना एवं जनसम्पर्क निदेशालय,
राज., जयपुर ।"

A reading of inquiry report substantiate the contention of the counsel for the petitioner. It is apparent from the inquiry report that no inquiry as required under Rule 16 of the Rules of 1958 was conducted by inquiry officer. It appears that the inquiry officer at the first called the petitioner on 10.12.1997 wherein he accepted about receipt of charge sheet. The inquiry officer thereafter narrated the

facts at his own and reached at the conclusion that the petitioner was guilty for remaining absent wilfully. It does not reveal from perusal of inquiry report as to what was the basis and foundation for facts averred in the inquiry report and to record a finding of guilt. No prosecution witness was examined and no other evidence at all was produced by the department. I failed to understand as to wherefrom the inquiry officer who is required to be an independent and impartial person gathered the facts averred in his report. A bare reading of the inquiry report speaks in volume about non compliance of mandatory provisions of the Rules of 1958 which clearly establishes the prejudice caused to the petitioner in defending himself. In fact the present one is not only a case of no evidence but is of no inquiry. The disciplinary authority without looking into the record of inquiry merely on basis of report given by inquiry officer imposed severe punishment of removal.

The next contention of the counsel for the petitioner is that the copy of inquiry report was not supplied to him by the respondents along with notice Anx.12 dated 19.2.1998 as a consequence he failed to defend himself adequately and the same has caused a serious prejudice to him.

It is a position admitted that no copy of inquiry report was supplied to the petitioner along

with notice Anx.12 dated 19.2.1998 and for this reason also violation of principles of natural justice is apparent and the order passed by disciplinary authority is unsustainable.

The counsel for the petitioner has further contended that entire inquiry was conducted only with view to penalise the petitioner and for that purpose Shri Ramswaroop Joshi (respondent No.3) was appointed as inquiry officer who was keeping bias with the petitioner. The allegation of bias against Shri Ramswaroop Joshi (respondent No.3) is substantiated by the petitioner by chain of circumstances.

It is contended by the counsel for the petitioner that Shri Ramswaroop Joshi (respondent No.3) at the first instance made an amendment in the order dated 31.5.1996 by transferring the petitioner from Jodhpur to Churu under order dated 13.6.1996. He has further stated that at the first instance Shri Kushal Tharwani was appointed as inquiry officer but for no reason he was changed by an order dated 20.10.1997 after receiving the representation dated 11.10.1997 submitted by the petitioner wherein he pointed out the fact about unauthorised amendment made by Shri Ramswaroop Joshi (respondent No.3) in the order dated 31.5.1996. He has also emphasized the manner in which the inquiry was conducted which resulted into removal of the petitioner. Nobody has

put in appearance on behalf of Shri Ramswaroop Joshi (respondent No.3). The allegation levelled against Shri Ramswaroop Joshi (respondent No.3), therefore, are remained unrebutted. It is apparent from perusal of entire record of the proceeding that Shri Ramswaroop Joshi (respondent No.3), the inquiry officer, acted in most casual manner and conducted the inquiry in most hasty way. An inquiry officer holds a very responsible duty which is required to be discharged by him fairly, objectively and with all impartiality. A delinquent employee should have complete faith in him. In the present case after appointment of Shri Ramswaroop Joshi (respondent No.3) as an inquiry officer an application was submitted by the petitioner for change of inquiry officer but no response was given to the same. Shri Ramswaroop Joshi too was aware of this fact as the application to change the inquiry officer is available on record of the inquiry. The petitioner in the representations for the change of inquiry officer also levelled allegation of castism against Shri Ramswaroop Joshi. All these allegations remained unrebutted. In totality of facts the allegation of bias against inquiry officer appears to be true.

I also found that the order of appellate authority is not in accordance with Rule 30 of the Rules of 1958. The appellate authority has not considered the appeal as required to be considered

under Rule 30 of the Rules of 1958. The same is also, therefore, not sustainable in eye of law.

In view of whatever discussed above, I am is having no hesitation in holding that entire disciplinary proceeding against the petitioner was conducted in violation of Rule 16 of the Rules of 1958 and, therefore, the out come of the disciplinary proceeding i.e. the order passed by the disciplinary authority is non-est in eye of law. The order of appellate authority also deserves to be quashed as it has lost the foundation in view of holding the inquiry and the order of disciplinary authority non-est.

Accordingly the writ petition is allowed. The disciplinary proceedings conducted against the petitioner in pursuance of memorandum dated 11.4.1997 and the order passed by the disciplinary authority dated 25.4.1998 and the order passed by the appellate authority dated 1.1.1999 are hereby quashed. The respondents are directed to reinstate the petitioner forthwith with all consequential benefits.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.